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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,048	06/20/2001	Francois Cunchon	T2147-907310	2706

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EXAMINER

NGUYEN, THAN VINH

ART UNIT	PAPER NUMBER
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2187

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

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Commissioner for Patents

Office Action Summary

Application No.

09/884,048

Applicant(s)

CUNCHON ET AL.

Examiner

Than Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Ot e*p3Xr

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DETAILED ACTION

1. This is a response to the amendment, filed 11/18/03.
2. Claims 9-17 are pending.

Response to Arguments

3. Applicant's arguments filed 11/18/03 have been fully considered but they are not persuasive. .
4. Applicant has amended claims 16,17 in attempting to overcome the previous 35 USC 112, second paragraph, rejection. However, the amendment does not overcome the previous 35 USC 112 rejection. Claim 16 is a method claim of operating a computing machine to automatically start/restart upon encountering a system error. This method is implemented by the computing machine. Claim 17, a dependent upon claim 16, is a method of manufacturing of the computing machine. The Examiner does not know what Applicant wants to claim, the method of manufacture or the operation method of the machine/product of manufacture. These two method claims are not related. One method comprises steps to manufacture the computing machine while, in the other method, the computing machine operates and performs another function (automatic start/restarting). Therefore, claim 17, the manufacturing method to create a product/machine, cannot be dependent upon claim 16, the operation of the machine (product of the manufacturing method). These claims should be separate and independent of one another.

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5. With regards to the claims rejection under 35 USC 102(b), Applicant argues that the prior of record does not teach the invention as claimed.

6. As to claim 9,16 Applicant argues that Arnold does not teach the automatic repair function to mount an operating system. The Examiner disagrees. As claimed, the automatic repair function is a function that calls a mounting function to mount the operating system. Arnold teaches this automatic repair function by causing the system reference diskette image (operating system) to be mounted during a booting process once an error is encountered (4/65-5/13).

7. As to claim 10, Applicant argues that the claimed features are not taught. Arnold teaches the claimed code sequence of loading the contents into the RAM (loading boot record into RAM; 4/14-20) and code sequence for activating the repair function (mounting boot image; 4/65-5/13).

8. As to claim 11, Applicant argues that the automatic repair function comprising a third code sequence to call the mounting function is not taught. Arnold teaches calling the operating system image to be mounted (4/25-30; 4/65-5/20).

9. As to claim 12,16 Applicant argues that the claimed feature is not taught. Arnold teaches the claimed acknowledgment of the error (4/65-68) and restarting the machine after the acknowledgment of the error (reboot; 4/65-5/13).

10. As to claim 17, the storing of the operating system and the claimed functions are taught by Arnold (creating partitions and storing and running operating systems; 4/29-30, 4/59-60, 9/39-40, 10/43-62).

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Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 16, Applicant claims a method for automatically starting a computing machine. However, in claim 17, Applicant claims a method of manufacturing the machine. It is vague and unclear as what Applicant is trying to claim. Claim 16 is a method claim of operating a computing machine to automatically start/restart upon encountering a system error. This method is implemented by the computing machine. Claim 17, a dependent upon claim 16, is a method of manufacturing of the computing machine. The Examiner does not know what Applicant wants to claim, the method of manufacture or the operation method of the machine/product of manufacture. These two method claims are not related. One method comprises steps to manufacture the computing machine while, in the other method, the computing machine operates and performs another function (automatic start/restarting). Therefore, claim 17, the manufacturing method to create a product/machine, cannot be dependent upon claim 16, the operation of the machine (product of the manufacturing method). These claims should be separate and independent of one another.

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13. Claim 9 recites the limitation "the mass memory" in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim. This should be "a mass memory".

14. Claim 17 recites the limitation "the manufacturing phase". This also lacks antecedent basis for this term.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 9-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Arnold et al (US 5,128,995), hereinafter as Arnold.

As to claim 9:

Arnold teaches the claimed computing machine comprising a RAM (RAM 32) and a mass memory (hard disk 62) in which an operating system is stored, characterized in that the mass memory comprises a partition (4/29-30, 4/59-60, 9/39-40, 10/43-62) that is read-only accessible to the operating system (protected region 4/5-17), said partition containing a startup function (reset/boot-up 4/14-15, 6/58-68), an automatic repair function (error detect/repair; 4/25, 4/65); and a function for mounting said operating system (mount/load operating system image; 4/14-30, 4/65-5/13, 11/42-12/64).

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As to claim 10:

Arnold teaches the startup function comprises a first code sequence for loading the contents of the partition into RAM (load boot image; 4/14-30) and a second code sequence for activating in RAM said automatic repair function (in case of error.; 4/25-30, 4/65-68, 9/40-47).

As to claim 11:

Arnold teaches a third code sequence that calls said mounting function, executable in RAM with write capability in at least one other partition of the mass memory (if error detected, load in system reference diskette image or system reference image, 4/25-30, 5/10-13, 20/30-41,63-68).

As to claim 12,13:

Arnold teaches a fourth code sequence for acknowledging an error indicated by said mounting function and a fifth code sequence for restarting the machine after the acknowledgment of the error (after error detected, boot another image; 4/14-30, 4/25-30, 5/10-13, 18/8-18, 20/30-41,63-68)..

As to claim 14:

Arnold teaches the mass memory is a hard disk (hard disk 62).

As to claim 15:

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Arnold teaches a switch for resetting the RAM and restarting the machine (reset/reboot switch, 6/65-68, 15/44-50).

As to claim 16:

Arnold teaches a method for automatically starting a computing machine comprising a RAM (RAM 32) and a mass memory (hard disk 62), characterized in that it comprises:

a step that starts the machine by means of a signal (reset/reboot signal; 4/15, 6/58-68);

a step that automatically loads into RAM the contents of a partition of the mass memory (4/14-18);

a step that automatically mounts an operating system from the RAM that includes the repair function based on a call from the automatic repair function (mount operating system; 4/14-30, 6/65-5/12);

a step that automatically acknowledges any error indicated in the third step and that reactivates the second step (after error detected, boot another image; 4/14-30, 4/25-30, 5/10-13, 18/8-18, 20/30-41,63-68).

As to claim 17:

Arnold teaches in the manufacturing phase of the machine :

a step that creates partitions in the mass memory (partitions are created 4/29-30, 4/59-60, 9/39-40, 10/43-62);

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a step that stores at least part of the operating system and functions for executing a startup, the automatic repair function is capable of calling a mounting function and an acknowledgment function in the first partition, which is to be read-only accessible to said operating system (operating system image is stored in hard disk partition(s) and is read-only by operating system; 4/1-20) .

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CAR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Than Nguyen whose telephone number is (703) 305-3866. The examiner can normally be reached on M-F from 8:00 a.m. to 3:00 p.m. EST.

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19. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

20. The fax phone number for Art Unit 2187 is 703-308-9051 or 703-308-9052.



Than Nguyen

Primary Patent Examiner

January 21, 2004